

# Nowra Trust Ordinance 2003

No 61, 2003

## Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the Nowra Trust.

## Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the trustee of the property described in each of the cells in column 1 of the table in the Schedule (the "Existing Property").

B. The property described in a cell in column 1 of the table in the Schedule is held on the trusts described in the corresponding cell in column 2 of the Schedule.

C. By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property is held, it is inexpedient to carry out and observe those trusts.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

### 1. Name of this ordinance

This Ordinance is the Nowra Trust Ordinance 2003.

### 2. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property is held, it is inexpedient to carry out and observe those trusts, and

- (a) it is inexpedient that the Existing Property be held for the same or like purposes as the trusts on which the Existing Property is held; and
- (b) it is expedient that power be given to the Property Trust to lease or licence from time to time any part of the real property forming part of the trust fund.

### 3. Definition of "trust fund"

In this Ordinance -

"trust fund" means -

- (a) the Existing Property; and
- (b) all real and personal property received or acquired by the Property Trust from time to time as an addition to the trust fund.

### 4. Name of the trust fund

The trust fund is to be known as the Nowra Trust.

### 5. New trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the parish of Nowra (the "Parish").

### 6. Capital of the trust fund

(1) The real property which forms part of the capital of the trust fund (other than the land comprised in folio identifier 1/724120), may be used for one or more of the following purposes -

- (a) a church;
- (b) a residence for the minister, an assistant minister or any person employed by the churchwardens of a church in the Parish;
- (c) a hall or halls;
- (d) a school or other place of assembly;
- (e) any purpose incidental to a purpose referred to in paragraph (a), (b), (c) or (d).

(1A) For the avoidance of doubt, the land comprised in folio identifiers 2/1047926 and 3/1047926 may be used for either of the following purposes -

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- (a) an office or offices,
- (b) a car parking area.

(1B) The land comprised in folio identifier 1/724120 which forms part of the capital of the trust fund is to be used for the purposes of a burial ground.

(2) Any personal property which forms part of the capital of the trust fund may be applied by the Property Trust for one or more of the following purposes -

- (a) the payment of all rates, taxes and charges incurred by the Property Trust in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund; and
- (b) the costs of maintenance and repair of any property forming part of the trust fund required to meet minimum standards of maintenance and repair prescribed by Act, Regulation, Order or other law and applying to that property; and
- (c) to the extent such personal property arises from a payment made to the Property Trust by the churchwardens of a church in the Parish for the purpose of enabling the Property Trust to make a payment under any contract made or to be made by the Property Trust as trustee of the trust fund with the approval of a majority of the parish council, for that purpose; and
- (d) for such purposes as the Standing Committee may direct by ordinance or resolution.

(3) Pending application under clause 6(2), any personal property which forms part of the capital of the trust fund is to be invested.

(4) If the churchwardens of a church in the Parish make a payment to the Property Trust as an addition to the trust fund for the purpose of enabling the Property Trust to make a payment under any contract made or to be made by the Property Trust as trustee of the trust fund and -

- (a) the full amount of the payment made by the churchwardens is not required by the Property Trust for that purpose, the Property Trust may pay to the churchwardens an amount equal to the excess; or
- (b) the Property Trust claims an input tax credit (as defined in the *New Tax System (Goods and Services) Act 1999*) in respect of the payment made under the contract, the Property Trust may pay to the churchwardens an amount equal to the amount of the input tax credit (or proportionate part thereof where the payment made by the churchwardens is less than the payment made by the Property Trust).

### **7. Application of the income of the trust fund**

(1) The income of the trust fund (other than income referred to in clause 7(2)), after paying all rates, taxes and charges incurred by the Property Trust in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund, is to be applied as follows -

- (a) 30% is to be capitalised, and
- (b) the balance is to be paid to the churchwardens of the church of the Parish or, if there is more than one church, the churchwardens of the principal church of the Parish, to be applied for such purposes of the Parish as the parish council may from time to time determine, except the payment of the stipends, allowances and benefits paid or provided to the minister.

(2) The income of the trust fund arising from a residential lease granted pursuant to clause 9(1) for a weekly rental which does not exceed \$750 or such other amount as the Standing Committee determines by resolution is to be applied in accordance with clause 7(1)(b).

### **8. Review**

(1) The authority to apply income under clause 7(1)(b) earned after the review date terminates on the review date.

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(2) For the purposes of subclause (1) “review date” means the date which is 10 years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.

(3) Any review of the application of income under clause 7(1)(b) must take into account the repair and maintenance of the building or other improvement situated on any real property which forms part of the capital of the trust fund in order to comply with the Heritage Act 1977.

### 9. Powers - leasing and licensing of real property

(1) With the written consent of the parish council of the Parish, the Property Trust may lease or licence any part of the real property forming part of the trust fund, except any part which is consecrated or licensed for use as a church, if the term of the lease or licence (when aggregated with the term of any option to renew such lease or licence) does not exceed 5 years.

(2) Nothing in this clause limits the powers of the Property Trust under the Anglican Church Property Trust Ordinance 1965 or under any other ordinance.

### 10. Commencement

This Ordinance commences on the 1 January which next follows the date of assent to this Ordinance.

### Schedule

Column 1	Column 2
Folio Identifier 1/724120 known as the site of Kalandar Street Cemetery, Kalandar Street, Nowra.	By Certificate of Title Volume 313 Folio 137 the land is held upon trust for the interment of the dead, according to the use of the United Church of England and Ireland, as by law established.
Folio Identifier A323812 known as the site of the Church of the Good Shepherd, Braidwood Road, Nerriga.	The land is held upon trust for the parish of Nowra although there are no written trusts.
Folio Identifiers 2/1047926 and 3/1047926 known as All Saints Church, hall, rectory and residence, situated at the corner of Plunkett & Berry Streets, Nowra.	By clause 3 of the Nowra Ordinance 2001 the land is held upon trust for – (a) a church, (b) a residence for a minister, assistant to the minister or a person employed by the churchwardens, (c) a hall or halls, (d) a school or other places of assembly, (e) an office or office, (f) a car parking area, or partly for one or another or others of those purposes and for any other purpose ancillary thereto in connection with the Anglican Church of Australia in the Parish.
Anglican Church Property Trust Client Fund 648	Pursuant to clause 4 of the Nowra Land Sale Ordinance 1996, the part of the fund comprising the net proceeds of sale arising under that ordinance to be applied towards one or more of – (a) the acquisition of other land in the Parish to be held upon trust for the Parish; and

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	<p>(b) the cost of building or altering or refurbishing buildings upon land held upon trust for the Parish; and</p> <p>(c) the repayment or reduction of any debt incurred in acquiring any land held upon trust for the parish or altering or refurbishing buildings upon such land; and</p> <p>(d) the costs of and incidental to the subdivision of land held upon trust for the Parish.</p> <p>Pending the application of the proceeds of sale as set out above, the Property Trust must invest the net proceeds and capitalise the income provided that the Property Trust may pay to the churchwardens of All Saints' Nowra out of the income from time to time the cost of renting premises to be used for the purposes of the parish pending the completion of the building, construction or refurbishment referred to above.</p> <p>Pursuant to clause 5 of the Nowra Ordinance 2001, the part of the fund comprising the net sale proceeds arising under that ordinance to be applied as follows –</p> <p>(a) towards the cost of purchasing or erecting on land held upon trust for the Parish a residence or residences for the minister or an assistant to the minister or person employed by the churchwardens of any church in the Parish; and</p> <p>(b) the remaining balance (if any), toward the costs of and incidental to the construction and/or fit out of offices for the Parish.</p> <p>Pending the application of the proceeds of sale as set out above, the Property Trust must invest the net proceeds (or balance thereof remaining from time to time) and capitalise the income provided that the Property Trust may pay to the churchwardens of All Saints' Nowra out of the income from time to time the cost of renting premises to be used for the purposes of the Parish pending the completion of the purchase or erection referred to in clause (a) above.</p>
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I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

PETER KELL  
Chairman of Committees

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I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 8 December 2003.

MA PAYNE  
Secretary

I Assent to this Ordinance.

PETER F JENSEN  
Archbishop of Sydney  
9/12/2003